

# Section 201 – Age Discrimination

Section 201 of the Congressional Accountability Act (CAA) applies certain rights and protections of the Age Discrimination in Employment Act of 1967 (ADEA) to covered employees. Under this section, all personnel actions – such as hiring, discharge, promotion, pay, or benefits – affecting covered employees who are 40 or more years of age must be free from discrimination based on age.

The ADEA section referenced by the CAA states a general prohibition against age discrimination in employment. The Board of Directors of the Office of Compliance has not adopted regulations on age discrimination. However, employing offices and covered employees may find it helpful to refer to court decisions interpreting the ADEA and Title VII, as well as the interpretations, opinions, and other materials issued by the Equal Employment Opportunity Commission (EEOC), which is responsible for implementing the ADEA.

## 1. Coverage

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The CAA provides that all personnel actions affecting covered employees shall be free from age discrimination. This includes hiring, discharge, promotion, pay, benefits, reassignment, and other personnel actions affecting the terms, conditions, and privileges of employment.

The covered employees and employing offices subject generally to the CAA are described in the “Covered Employees” section of the *CAA Handbook* and the Office of Compliance web site ([www.compliance.gov](http://www.compliance.gov)).

## 2. Age Discrimination Prohibited

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The CAA protects individuals who are at least 40 years old against age discrimination. Individuals younger than 40 are not protected, even if they are subjected to age discrimination.

The law generally forbids the use of age as a motivating factor in personnel actions. Employing offices may not discriminate in hiring, nor, except as otherwise permitted, involuntarily retire someone who is at least 40 years old because of age.

Proving motivation depends on the facts of a particular case. For example, placing a phrase like “age 25-50” or “young” or “college student” in a help-wanted notice or advertisement may be evidence of discriminatory motive. Furthermore, a covered employee may seek to prove that he or she was treated differently from others in similar circumstances, and to prove that age was a motivating factor. Under certain circumstances, an employing office may need to demonstrate that it took adverse personnel action against a covered employee for non-discriminatory reasons, and accurate records of employees’ job performance may be critical in such a case.

A covered employee over 40 may also assert that he or she is harassed on the basis of age. Insults, jokes, slurs, or other conduct relating to age may be unlawful if severe, egregious, and pervasive enough to create a hostile environment or interfere with an individual’s work performance.

## 3. Exceptions

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Age discrimination law generally recognizes several exceptions. For example, a bona fide seniority or merit system may be permissible if it is not intended to discriminate on the basis of age. The employing office must prove that the conditions for a particular exception have been met.

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## 4. Waiver

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The CAA makes applicable certain provisions of the ADEA regarding waiver of rights and protections. These provisions apply to any waiver that an employing office requests from a covered employee in connection with an exit incentive or other employment termination program, as well as any other waiver of a covered employee's age-discrimination right or claim.

Any such waiver of a right or claim must be “knowing and voluntary” and must be in exchange for consideration in addition to anything of value to which the individual is already entitled. This includes, among other things: that the agreement be in writing in understandable language, that it refer specifically to ADEA rights or claims; the individual does not waive rights or claims that arise after the date the waiver is executed; the individual is advised in writing to consult with an attorney prior to signing the agreement; and that it give the individual at least 21 days (45 days for a group exit incentive program) to consider the agreement and at least 7 days following execution to revoke the agreement.

## 5. Intimidation or Reprisal

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Intimidation, reprisal, or discrimination against a covered employee for opposing practices or for initiating or participating in a proceeding is prohibited.

## 6. Remedies

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In case of a violation of the age discrimination provisions of the CAA, several kinds of remedies may be available:

- ◆ The remedy may be such legal or equitable relief as will effectuate the purposes of the ADEA, as made applicable by the CAA (For example, in an appropriate case, the Board of Directors or the courts might find that the CAA authorizes an order to hire, reinstate, or promote, or to give back pay or front pay.)
- ◆ Liquidated damages are provided in an amount equal to the amounts owing to a person as a result of the violation, but only in a case of a willful violation (The Board of Directors or courts might find a willful violation if an employing office knew or showed reckless disregard for whether its conduct was prohibited.)